



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 3307-00
2 June 2000

1STLT [REDACTED] JSMCR
[REDACTED]

Dear Lieutenant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

It is noted that the Commandant of the Marine Corps (CMC) has directed the filing in your record of a memorandum reflecting you did not desire to rebut the reviewing officer's comments on the contested fitness report for 27 June to 15 December 1998.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 1 June 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the letter from the Headquarters Marine Corps (HQMC) Performance Evaluation Review Branch, dated 3 May 2000, and the report of the HQMC Performance Evaluation Review Board (PERB), dated 4 May 2000, copies of which are attached. They also considered your counsel's letters dated 24 April and 8 May 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. They found the contested fitness report to be adequately specific. They did not consider your assertion that this report was "a reflection of personal disagreements between a company commander and a platoon commander" to be a factual matter whose adjudication by the reviewing officer was required. In view of the above, your application beyond the relief effected by CMC has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

Copy to:
Charles W. Gittins, Esq.



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1600
MMER
3 MAY 2000

[REDACTED] P.C.

[REDACTED] 22645

Dear Mr. [REDACTED]:

Reference is made to your letter of April 24, 2000 concerning your client, First Lieutenant [REDACTED], USMCR.

First, let me apologize for failing to communicate actions of the Performance Evaluation Review Board (PERB) through you. That was an oversight on my part, and certainly not intentional.

Since Lieutenant [REDACTED] has no desire to comply with the Board's remedy in his case, we will prepare and forward to the Board for Correction of Naval Records (BCNR), the PERB's final recommendation. Per your request, the original letter to Lieutenant [REDACTED] from the PERB, advising him of the final outcome, will be provided to you.

The information you have requested pursuant to the provisions of the Privacy Act must be obtained under the Freedom of Information Act (FOIA). In this regard, please direct your request to:

Commandant of the Marine Corps
(Code AR)
Headquarters, U.S. Marine Corps
2 Navy Annex
Washington, DC 20380-1775

I hope the information provided will be of assistance.

Sincerely,

D. J. Christiansen
D. J. CHRISTIANSEN

Head, Performance Evaluation
Review Branch
Personnel Management Division
By direction of the Commandant
of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

2307-00
IN REPLY REFER TO:
1610
MMER/PERB
4 MAY 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF FIRST
LIEUTENANT [REDACTED] USMCR

Ref: (a) 1stLt [REDACTED] undtd DD Form 149
(b) MCO P1610.7D w/Ch 1-5
(c) CMC ltr 1610 MMER/PERB of 23 Mar 00
(d) [REDACTED] ltr of 24 Apr 00

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 22 March 2000 to consider First Lieutenant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 980627 to 981215 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner, via his legal counsel, argues that the report was not prepared per the guidance contained in reference (b). Specifically, petitioner's legal counsel contends the petitioner should have been provided an opportunity to acknowledge and respond to the adverse nature of the Reviewing Officer's comments. Legal counsel further opines that the Section C narrative is inconsistent with Section C ratings.

3. In its proceedings, the PERB concluded that:

a. Contrary to the assertions levied in reference (a), the Board discerns absolutely no internal inconsistency whatsoever. That the petitioner's legal counsel believes otherwise is viewed as his interpretation and application of reference (b) as opposed to the actual spirit and intent of that directive.

b. The Board agrees that the petitioner should have been afforded an opportunity to view and respond to the Reviewing Officer's comments. Owing to the relative recency of the report at the time the PERB first considered reference (a) (14 months), the Board concluded that referral at that time would provide adequate relief. This was determined to be a viable option since the main argument concerned the improper handling of the report as opposed to an "inaccurate" evaluation. In this regard, the Board failed to find anything in reference (a) to document

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF FIRST
LIEUTENANT [REDACTED] USMCR

precisely how or why the petitioner rated more than what had been recorded.

c. As evidenced by reference (c), the PERB notified the petitioner that he would be given an opportunity to respond to the Reviewing Officer's comments. By reference (d), petitioner's legal counsel notified the PERB that petitioner had no desire "...to attempt to revisit the facts.". Given this declaration, the PERB has directed cessation of all action involved in referring the Reviewing Officer's comments to the petitioner. Likewise, an appropriately worded Memorandum for the Record (MFR) will be prepared and inserted onto the performance ("P") section of petitioner's official military personnel file indicating that he had been given an opportunity to respond to the Reviewing Officer's comments appended to the challenged fitness report, but declined to do so.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of First Lieutenant [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]

Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps